No. 348

In the Supreme Court of the United States

OCTOBER TERM, 1950

ANDREW JORDAN, District Director of Immigration and Naturalization, Petitioner

v.

SAM DE GEORGE

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE PETITIONER

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OPINION BELOW

The opinion of the Court of Appeals (R. 48-55) is reported at 183 F. 2d 768. The District Court wrote no opinion (R. 42).

JURISDICTION

The judgment of the Court of Appeals was entered on July 10, 1950 (R. 55). The petition for

a writ of certiorari was filed October 6, 1950, and was granted November 27, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether conspiracy to defraud the United States of taxes on distilled spirits is a crime involving moral turpitude within the meaning of Section 19(a) of the Immigration Act of 1917.

STATUTE INVOLVED

Section 19(a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, 8 U.S.C. 155 (a), provides:

> * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *.

STATEMENT

This was a habeas corpus proceeding challenging the legal sufficiency of a deportation order. Respondent, a native and citizen of Italy, entered the

United States in 1921, when he was seventeen years of age (R. 17). He has continued to live in this country since then. During his period of residence in the United States he has been convicted four times. The first was in 1924, when he was convicted for transporting liquor and sentenced to a term in the reformatory (R. 18). The second was in 1931 when he was fined $30 for transferring license plates (R. 18). The deportation charges in the instant case are not predicated upon these two offenses, but rest entirely upon two subsequent convictions, in 1938 and in 1941.

In May, 1937, respondent was indicted under Title 18 U.S.C. 88,[1] for conspiracy, in concert with seven other defendants, to violate twelve sections of the Internal Revenue Code (R. 27-31). Three of the acts recited in the indictment specifically involved the element of fraud on the United States, as follows (R. 28-29):

> to carry on the business of distillers and to defraud the United States of the tax on the liquors distilled by them;
>
> * * * * * * * * *
>
> to possess spirituous liquors, to wit, whiskey and alcohol; with intent to sell it in fraud of law and evade the tax thereon;
>
> to remove and conceal distilled spirits, to wit, whiskey and alcohol, with intent to defraud the United States of the tax thereon.[2]

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[1] Now 18 U.S.C. 371.

[2] The quoted charges were supported by 26 U.S.C. (1934 Ed.) 1155(f), 1440 and 1441, which were among the twelve statutory sections mentioned in the indictment.

On May 27, 1938, respondent pleaded guilty to the offenses charged in the indictment and was sentenced to imprisonment for a term of one year and one day (R. 26-27).

After serving his sentence respondent resumed his unlawful activities and in December, 1939 he was again indicted for conspiracy, this time in combination with eight other defendants, to violate the internal revenue laws of the United States (R. 32-37). Again the indictment charged, among other offenses, that the defendants did conspire to "unlawfully, knowingly, and wilfully defraud the United States of tax on distilled spirits" (R. 33).[3] After trial, respondent was found guilty and sentenced on June 6, 1941, to imprisonment for a period of two years (R. 38).

While imprisoned on this second conviction, respondent was served with a warrant of arrest in deportation proceedings, asserting that he appeared to be subject to deportation because of two sentences of one year or more for the commission subsequent to entry of crimes involving moral turpitude (R. 10-11). After continued hearings on this charge, at which respondent was represented by counsel (R. 11-23), and after consideration of the case by the Commissioner of Immigration and Naturalization and the Board of Immigration Appeals, respondent was ordered deported and a

[3] Although this indictment did not refer to any specific section of the Internal Revenue Code, the quoted charge apparently rested on 26 U.S.C. (1940 Ed.) 2806(f).

warrant for his deportation was issued January 11, 1946, on the ground that he had been sentenced to imprisonment more than once for a term of one year or more for the commission subsequent to entry of a crime involving moral turpitude (R. 41). At respondent's request, his deportation was deferred from time to time until early in 1949, when petitioner moved to execute the warrant of deportation (R. 8-9).

On March 8, 1949, respondent filed a petition for a writ of habeas corpus in the District court for the Northern District of Illinois challenging the validity of the deportation order on the ground that the crimes of which he had been convicted "did not involve moral turpitude" and were therefore "insufficient in law and in fact to justify" his deportation (R. 2-3). Petitioner filed a return (R. 5-9) to which he attached the record of the hearing accorded respondent in the deportation proceedings (R. 11-23) and copies of the indictments and convictions referred to above (R. 26-38), which respondent had identified at the administrative hearing as relating to him (R. 6-7, 18-20). After a hearing, the District Court dismissed the petition and directed that respondent be returned to petitioner's custody (R. 42).

The United States Court of Appeals for the Seventh Circuit reversed the order of the District Court and remanded the cause with directions to enter an order discharging respondent (R. 55). That court thought that "crimes involving moral

turpitude, as those words are used in [§19(a) of the Immigration Act of 1917], were intended to include only crimes of violence, or crimes which are commonly thought of as involving baseness, vileness or depravity. Such a classification does not include the crime of evading the payment of tax on liquor, nor of conspiring to evade that tax" (R. 54).

SUMMARY OF ARGUMENT

In providing for the deportation of aliens who have been convicted of two crimes involving "moral turpitude" the immigration statute has used a term that is not clearly defined. The legislative history demonstrates, however, that Congress sought to reach the confirmed criminal, whose criminality had been revealed in two serious penal offenses.

In the context of the deportation statute the character of the alien is not directly in issue; the question is whether the crimes of which he has been convicted involve moral turpitude. Therefore it is the nature of the crime, not the circumstances surrounding its commission, that must be examined.

The various definitions of moral turpitude provide no exact test by which we can classify the specific offenses here involved. Essentially, they must be measured against the moral standards that prevail in contemporary society to determine whether the violations are generally considered essentially immoral.

Violators of the alcohol tax laws are the direct offspring of the gangsters of the prohibition era who were engaged in organized lawlessness, thriving on violence and corruption. They make a business of crime rather than accidentally or occasionally falling on the wrong side of the law.

Basically, the crimes for which the respondent was convicted constitute frauds against the United States. Criminal violations involving fraud have always been found to involve moral turpitude. By any rational standard this must be so, whether the fraud be against individuals or against the Government.

The decision below is directly opposed to *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429 (C.A. 2); *Maita* v. *Haff*, 116 F. 2d 337 (C.A. 9); and *Guarneri* v. *Kessler*, 98 F. 2d 580 (C.A. 5), certiorari denied, 305 U.S. 648.

ARGUMENT

Confronting the Court in this case is a question of statutory construction. Respondent, concededly an alien, was convicted in the United States for two criminal offenses—each of which consisted of conspiracy to defraud the United States of revenue. The second conviction was for an independent infraction which was committed after completion of his sentence for the first crime. See *Fong Haw Tan* v. *Phelan*, 333 U.S. 6. The only issue is whether the criminal violations involved moral turpitude.

If the answer is affirmative, then the deportation order is legally unassailable.

I

The History of the Statute Indicates That Congress Sought to Reach the Confirmed Criminal Who Had Committed Two Serious Crimes.

The designation of crimes involving moral turpitude has been a feature of our immigration laws almost from the inception of federal regulation. The present statute refers to crimes involving moral turpitude in four different connections.[4] While some criticisms have been leveled at the ambiguity of this term, Congress evidently has deemed it a satisfactory formula for the expression of its objectives.[5]

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[4] Sec. 3, Immigration Act of 1917, 8 U.S.C. 136(e), exclusion of persons "who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude"; three clauses of Sec. 19(a), Immigration Act of 1917, as amended, 8 U.S.C. 155(a), first, deportation for conviction and sentence for "a crime involving moral turpitude, committed within five years after the entry of the alien into the United States"; second, the statutory provision considered in the instant case, providing for deportation of aliens who have been convicted and sentenced for two crimes involving moral turpitude; and third, deportation for a crime involving moral turpitude prior to entry.

[5] The designation of crimes involving moral turpitude is continued in the currently pending omnibus bill to recodify the immigration and nationality laws, introduced by the Chairman of the Senate Judiciary Committee, Sec. 241(a), S. 716, 82nd Cong., 1st Sess. See also S. Rept. 1515, 81st Cong., 2d Sess., pp. 390-392.

In attempting to fathom the legislative purpose we turn first to an exploration of the legislative development.

Public concern over the influx and continued stay of alien criminals is as old as our Nation. From time to time in the national history, sharp clamor was provoked by the practices of some European governments in exporting convicts to the United States. Garis, *Immigration Restriction,* pp. 12, 18, 36-44, 51-57, 94. Eventually these protests culminated in the Act of March 3, 1875, 18 Stat. 477, which forbade the entry into the United States of convicts, except those whose convictions had resulted from political offenses. This prohibition was incorporated in 1882 in the first general federal enactment regarding immigration. Secs. 2 and 4, Act of August 3, 1882, 24 Stat. 214.

The first reference to moral turpitude appeared in the Act of March 3, 1891, 26 Stat. 1084, which directed the exclusion of "persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude". Political offenses again were expressly excepted, as they have been in every similar enactment.[6] The legislative proceedings contemporaneous with the adoption of the 1891 statute furnish scant guidance in evaluating this term. Evidently the sponsors

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[6] Sec. 11 of this statute provided for the first time that any alien who entered in violation of law could be deported within one year after his arrival. Later enactments gradually expanded this period of limitation to its present 5-year span.

of the measure believed they were introducing into the statutory pattern a designation which was generally understood and which did not accomplish any significant change.[7] The explanatory committee report merely stated that the bill barred "persons who have been convicted of felony or other infamous crimes." H. Rep. 3808, 51st Cong. 2d Sess., p. 2.[8] Similar language was retained, without further explanation, in the statutes of 1903 and 1907. Sec. 2, Act of March 3, 1903, 32 Stat. 1213; Sec. 2, Act of Feb. 20, 1907, 34 Stat. 898.

Continued dissatisfaction with the operation of the statutes barring criminal aliens led to the studies of the Immigration Commission. The final report of that group declared, 1 *Reports of the Immigration Commission* (1910), 27, that:

> The present immigration law is not adequate to prevent the immigration of criminals, nor is it sufficiently effective as regards the deportation of alien criminals who are in this country.

The Commission recommended that deportation be prescribed for aliens who became criminals within a reasonably short time after their arrival, but

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[7] The report of the Select Committee on Immigration and Naturalization (H. Rep. 3807, 51st Cong. 2d Sess.) which preceded this measure did not mention the introduction of the term moral turpitude as one of the most important proposed amendments.

[8] See also 22 Cong. Rec. 2950, which indicates that the Committee was thinking of infamous crimes.

urged that such deportation should not be incurred for "minor offenses". *Id.*, p. 34.[9]

The Immigration Act of 1917, which evolved largely out of the recommendation of the Immigration Commission, for the first time required the deportation of aliens involved in criminal activities within the United States. In their earlier stages the legislative proposals provided only for deportation upon conviction and sentence for crimes committed within five years after entry. 53 Cong. Rec. 4864. The provisions dealing with repeaters were introduced as an amendment on the floor of the House by Representative Sabath, on behalf of the House Committee. In explanation, Representative Sabath stated, 53 Cong. Rec. 5167:

> I am offering this amendment to demonstrate that I have no desire to protect a real criminal, a man who is a criminal at heart, a man who is guilty of a second offense involving moral turpitude and for the second time is convicted. A man of that kind is a criminal and is not entitled to consideration on the part of any of the citizens of the United States.

The sentiments were endorsed by Representative Burnett, sponsor of the bill and Chairman of the

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[9] In its classification of crimes the Commission listed gainful offenses, which "consist of blackmail and extortion, burglary, forgery and *fraud*, larceny and receiving stolen property, and robbery. All of these are predatory offenses, committed for purposes of gain." 36 Reports of the Immigration Commission (1910) 11. (Italics supplied.)

Committee, in agreeing to the amendment, 53 Cong. Rec. 5168:

> The police commissioner of New York was before the Committee, and he showed an alarming condition in the prisons in regard to aliens who commit crimes after they come here, and he insisted that there should be no time limit as to the deportation of any of them this side of final citizenship. * * * every member of the committee believe that it would be a harsh rule * * *.
>
> But the suggestion was then made by the gentleman from Illinois [Mr. Sabath] that those who committed a second crime involving moral turpitude showed then a criminal heart and a criminal tendency, and they should then be deported; and the committee unanimously agreed with the gentleman that that ought to be done.

While these utterances are couched in somewhat general language, they do demonstrate, we believe, that this statute was aimed at a person who had committed serious crimes, a confirmed criminal, a repeater. See also *Fong Haw Tan* v. *Phelan*, 333 U. S. 6; S. Rep. 352, 64th Cong., 1st Sess., p. 15.

We cannot agree with the court below (R. 49-50) that the legislative history indicates that Congress was thinking only of violent crimes and related offenses. The off-hand views expressed by ordinary witnesses at committee hearings hardly are a reliable index of the Congressional purpose. Cf.

United States v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125. Moreover, the statement of the Committee Chairman, Representative Burnett, which we have just quoted, indicates quite decisively that the Committee and the Congress did not fully subscribe to the views of Police Commissioner Woods. Consequently, the indecisive materials relied on by the Court below hardly can chart a true course for applying the statute.

II

The Phrase "Crime Involving Moral Turpitude" Has Generally Been Interpreted to Mean Offenses which Contemporary Society Considers Essentially Immoral.

In prescribing for criminal misconduct involving moral turpitude, Congress was employing a generalized term. Similar generalizations are not uncommon in the immigration and nationality laws of the United States.[10] In utilizing them, Congress doubtless "intended an elastic test, one which should not be circumscribed by attempts at precise definition." *Schneiderman* v. *United States*, 320 U. S. 118, 139.

In referring to criminal offenses involving moral turpitude Congress was invoking a descriptive

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[10] E.g., "likely to become a public charge", *Mahler* v. *Eby*, 264 U.S. 32; "good moral character", *Petitions of Rudder*, 159 F. 2d 695 (C.A. 2); "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the" United States, *Schneiderman* v. *United States*, 320 U.S. 118.

term [11] which had long been familiar in Anglo-American law.[12] Common usages, in addition to that in the immigration statutes, have occurred in legislation dealing with the disbarment of attorneys [13], the revocation of medical licenses [14], the disqualification or impeachment of witnesses [15], contribution between joint tort feasors [16], and slander.[17]. Of the many definitions that have been attempted, the most popular probably has been that of Bouvier, accepted by the court below (R. 49). See also *Ng Sui Wing* v. *United States*, 46 F. 2d 755 (C.A. 7). A definition of moral turpitude that

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[11] Related appellations, bearing somewhat similar meanings, are "infamous crimes", "*crimen falsi*", "*malum in se*", and "felonies". See 1 Burdick, *Law of Crimes*, 87-89; Clark and Marshall, *Crimes* (4th Ed.) 12. Of these the term "felony" is the most precise, since it is commonly measured by the severity of the punishment.

[12] See *Burdick, op. cit.*, supra; 58 C.J.S. 1200; note, 43 Harv. L.R. 117; *United States ex rel. Manzella* v. *Zimmerman*, 71 F. Supp. 534, 537 (E.D. Pa.).

[13] *In re McAllister*, 14 Cal. 2d 602, 95 P. 2d 932; *Bartos* v. *United States District Court*, 19 F. 2d 722 (C.A. 8); 7 C.J.S. 736; Bradway, *Moral Turpitude As the Criterion of Offenses That Justify Disbarment*, 24 Cal. L.R. 9-27.

[14] *White* v. *Andrew*, 70 Colo. 50; 48 C.J. 1099.

[15] 3 Wharton, *Criminal Evidence* (11th Ed.) 2005, 2261; 3 Wigmore, *Evidence* (3rd Ed.) 540; 3 Jones, *Evidence* (4th Ed.) 1286.

[16] *Fidelity & Cas. Co.* v. *Christenson*, 183 Minn. 182; 18 C.J.S. 16.

[17] *Sipp* v. *Coleman*, 179 Fed. 997 (C.C.D. N.J.).

is perhaps more comprehensive may be found in Black's *Law Dictionary* (3rd Ed.), at pp. 1765-1766:

> A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpitude", *i.e.,* anything done contrary to justice, honesty, modesty, or good morals. * * * It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man. * * * Although a vague term, it implies something immoral in itself, regardless of its being punishable by law; * * * thus excluding unintentional wrong, or an improper act done without unlawful or improper inten[t] * * *. It is also said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind.

But no definition is entirely satisfactory in attempting to measure the moral impact of criminal misconduct. Congress manifestly intended the test to reflect the "generally accepted moral conventions current at the time, so far as we could ascertain them." *United States* v. *Francioso,* 164

F. 2d 163 (C.A. 2). As used in the Immigration Acts the term "moral turpitude" doubtless "refers, not to legal standards, but rather to those changing moral standards of conduct which society has set up for itself through the centuries." *United States ex rel. Manzella* v. *Zimmerman,* 71 F. Supp. 534, 537 (E.D. Pa.). See also *United States ex rel. Iorio* v. *Day,* 34 F. 2d 920, 921 (C.A. 2); *Repouille* v. *United States,* 165 F. 2d 152 (C.A. 2); *Sipp* v. *Coleman,* 179 Fed. 997 (C.C.D. N.J.).

In evaluating the degree of moral offensiveness a number of subsidiary considerations should be taken into account. In the first place, the convictions here were for conspiracy. However, it seems evident enough that if moral turpitude was implicit in the susbtantive crimes, the same consequence would attach to convictions for conspiracy in committing those crimes. *In re McAllister,* 14 Cal. 2d 602, 95 P. 2d 932; cf. *United States ex rel. Meyer* v. *Day,* 54 F. 2d 336 (C.A. 2). Moreover, it is generally recognized that it is the crime itself which must involve moral turpitude and circumstances exacerbating or mitigating the defendant's conduct in the particular care are not relevant. *United States ex rel. Mylius* v. *Uhl,* 210 Fed. 860 (C.A. 2). In determining the moral culpability of the offense the court therefore can look only to its inherent nature, as defined in the penal statute and in the record of conviction. *United States ex*

rel. Zaffarano v. *Corsi*, 63 F.2d 757, 758 (C.A. 2); *Ng Sui Wing* v. *United States*, 46 F.2d 765 (C.A. 7); *United States ex rel. Robinson* v. *Day*, 51 F. 2d 1022 (C.A. 2). In the light of this concept it is difficult to understand the significance of the observation of the court below (R. 52, 48-49) that "relator thought he had been convicted of conspiracy to violate the liquor laws, not the internal revenue laws."[18] The impact of the respondent's conduct must be gauged in the light of legal requirements, and not his subjective understanding. Cf. *Savorgnan* v. *United States*, 338 U. S. 491, 500. Thus, a defendant's later protestation that he was not animated by fraudulent intent cannot be permitted to override the record of conviction, which is the only measure of his turpitude. *United States ex rel. Millard* v. *Tuttle*, 46 F. 2d 342 (E.D. La.).

III

Conspiracy to Defraud the United States of Taxes on Distilled Liquor is a Crime Involving Moral Turpitude.

It is essential, we believe, to keep clearly in mind the limited issue, and the only issue, that must be resolved in this case. The question for decision is not, as the court mistakingly supposed, whether a liquor law violation as such is morally indefen-

[18] It is difficult also to find any relevance in the letter from a real estate man, in the face of the record of criminality, asserting that respondent always had been a good citizen (R. 48).

sible.[19] On that issue the cases are in conflict.[20] Moreover, the cases which have found moral turpitude absent in such violations have generally involved isolated offenses and not organized criminality. *Bartos* v. *United States District Court*, 19 F. 2d 722 (C.A. 8); cf. *Rousseau* v. *Weedin*, 284 Fed. 565 (C.A. 9).

The respondent's offenses transgress beyond the domain of violation of a regulatory statute. For he was found guilty of conspiracies to defraud the United States of revenue. The crucial feature of this case, in our view, is the charge of fraud against the United States.[21] Fraud is one of the clearest indications of moral turpitude and, in fact, the presence of fraud has been used by the courts as

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[19] The respondent had been convicted of conspiracies to violate provisions of the Internal Revenue Law not of the Federal Alcohol Administration Act (49 Stat. 977, 27 U.S.C. 201-212). It is the latter law which is the successor to the National Prohibition Law and which is a regulatory statute, not a revenue law.

[20] *Pro: Riley* v. *Howes*, 17 F. 2d 647 (D. Me.), reversed on other grounds, 24 F. 2d 686 (C.A. 1); *Rudolph* v. *United States*, 6 F. 2d 487 (C.A.D.C.) certiorari denied, 269 U.S. 559. *Contra: United States ex rel. Iorio* v. *Day*, 34 F. 2d 920 (C.A. 2); *Coykendall* v. *Skrmetta*, 22 F. 2d 120 (C.A. 5); *Bartos* v. *United States District Court*, 19 F. 2d 722 (C.A. 8). *Matter of J* , 2 I. & N. Dec. 99. See also authorities collected in note, 75 U. of Pa. L. R. 357 (1927); note, 43 Harv. L. R. 117; 58 C.J.S. 1205.

[21] The court below stated that, "He would still have been found guilty if he had never heard of the requirement of payment of tax on the liquor involved" (R. 52). This appears inconsistent with the fact that the charges against him in both cases included specific allegations of an intent to defraud (R. 28-29, 33).

a test in applying the deportation laws.[22] Fraud against the Government is not less reprehensible than fraud in business relationships. See *United States ex rel. Popoff* v. *Reimer*, 79 F. 2d 513, 515 (C.A. 2); *United States* v. *Gottfried*, 165 F. 2d 360, 368 (C.A. 2). Without deciding the issue, this Court intimated as much in *Fiswick* v. *United States*, 329 U. S. 211, 221. In fact, since in a democracy a fraud against the Government is the equivalent of a fraud against one's fellow citizens, a contrary view would be incomprehensible.

This Court has sanctioned extraordinary remedies to defeat and discourage frauds against the United States. Citizenship rights (*Knauer* v.

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[22] *Ponzi* v. *Ward*, 7 F. Supp. 736 (D. Mass.) (use of mails to defraud—"Crimes involving a fraud are crimes which the courts have looked upon as involving moral turpitude within the meaning of the statute."); *Mercer* v. *Lence*, 96 F. 2d 122 (C.A. 10) certiorari denied, 305 U.S. 611 (conspiracy to defraud by deceit and falsehood); *United States ex rel. Medick* v. *Burmaster*, 24 F. 2d 57 (C.A. 8) (concealing assets in bankruptcy); *Nishimoto* v. *Nagle*, 44 F. 2d 304 (C.A. 9), and *United States ex rel. Portada* v. *Day*, 16 F. 2d 328 (S.D. N.Y.) (issuing checks with intent to defraud); *United States ex rel. Millard* v. *Tuttle*, 46 F. 2d 342 (E.D. La.) (execution of chattel mortgage with intent to defraud—"conviction of an offense with intention to defraud * * * on its face I think implies moral turpitude. * * I think it hardly necessary to cite authority to support the proposition that the commission of a fraud involved moral turpitude."); *Bermann* v. *Reimer*, 123 F. 2d 331 (C.A. 2) (obtaining goods under false pretenses); *United States ex rel. Robinson* v. *Day*, 51 F. 2d 1022 (C.A. 2) (forgery—"Forgery * * * involves an intent to defraud, and thus is a crime of moral turpitude."); *United States ex rel. Popoff* v. *Reimer*, 79 F. 2d 513-515 (fraud in naturalization proceeding).

United States, 328 U.S. 654), patents (*United States* v. *Bell Telephone Co.*, 128 U.S. 315), and land grants (*United States* v. *Throckmorton*, 98 U.S. 61), obtained through fraud have been revoked. And judgments induced by deception of the court have been vacated despite the lapse of many years. *Hazel-Atlas Glass Co.* v. *Hartford Empire Co.*, 322 U.S. 238.

The court below apparently felt that the insignia of moral turpitude is reserved only for crimes of violence or depravity (R. 49). Yet the predatory crimes also have generally been regarded as turpitudinous, whether they have involved violence or not. Thus, moral turpitude is implicit in larceny, whether it be grand or petit. *United States ex rel. Meyer* v. *Day*, 54 F. 2d 336 (C.A. 2); *Tillinghast* v. *Edmead*, 31 F. 2d 81 (C.A. 1). And there is universal agreement, too, that many criminal impairments of the authority of government, such as perjury,[23] counterfeiting,[24] and smuggling,[25] likewise necessarily involve moral turpitude.

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[23] *United States ex rel. Boraca* v. *Schlotfeldt*, 109 F. 2d [illegible] (C.A. 7); *Kaneda* v. *United States*, 278 Fed. 694 (C.A. 9), certiorari denied, 259 U.S. 583; *United States ex rel. Karpay* v. *Uhl*, 70 F. 2d 792 (C.A. 2); *United States ex rel. Majka* v. *Palmer*, 67 F. 2d 146 (C.A. 7); *Ono* v. *Carr*, 56 F. 2d 772 (C.A. 9).

[24] *United States ex rel. Volpe* v. *Smith*, 289 U.S. 422, 423; *United States ex rel. Schlimmgen* v. *Jordan*, 164 F. 2d 633 (C.A. 7).

[25] *Guarneri* v. *Kessler*, 98 F. 2d 580 (C.A. 5), certiorari denied, 305 U.S. 648.

The court below relied upon two judicial pronouncements which state that the evasion of taxes is not generally viewed as morally shameful by a large segment of our population.[26] The fine line drawn between tax avoidance and tax evasions provides some basis for this view in the area where the violation involves accounting or the application of the statutes or regulations. It is not generally regarded as morally reprehensible to resolve all questions of interpretation in favor of one's own pocketbook, for no one likes to pay taxes. Acts of omission, rather than commission, have been held by this Court to constitute misdemeanors under the Revenue Code, rather than felonies. *Spies* v. *United States*, 317 U.S. 492. But most people must realize that the maintenance and defense of the Nation depend upon the collection of taxes, and fraud, particularly where it is affirmatively manifested, is not sanctioned by any considerable portion of our citizenry. In the *Spies* case referred to above, this Court stated (at page 499):

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[26] The court referred to the dissenting opinion of Judge Learned Hand in *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429, 431 (C.A. 2), (which expressed the view that people view the evasion of taxes as a "venial peccadillo"); and to the dictum in *United States* v. *Carrollo*, 30 F. Supp. 3, 7 (W.D. Mo.), (the offense involved was an attempt to evade payment of a tax, a different crime from a fraudulent evasion). The court also cited with approval *United States ex rel. Manzella* v. *Zimmerman*, 71 F. Supp. 534 (E.D. Pa.) dealing with a prison break, although the holding in that case appears to have no direct relevance. (R. 53-54.)

> By way of illustration, and not by way of limitation, we would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, *concealment of assets or covering up sources of income,* handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the *likely effect of which would be to mislead or to conceal.* If the tax-evasion motive plays any part in such conduct the offense may be made out even though the conduct may also serve other purposes such as concealment of other crime.

The collection of taxes certainly is of the most vital importance to the existence of government. *Priestman* v. *United States,* 4 Dall. 28, 34. Fraudulent evasions of the taxpayer's obligations necessarily must be regarded with the utmost gravity. It would be a startling proposition, we believe, to proclaim as an accepted precept of our jurisprudence that a fraudulent evasion of taxes is not to be considered as morally reprehensible. In our view such misconduct indubitably would be viewed as morally obnoxious by the majority of our citizens. *In re Deisen,* 173 Minn. 297.

Moreover, the offenses committed by the respondents not only involve fraud, they were in themselves a business entirely based upon fraud. This is not the case of an individual who, because of economic circumstances committed isolated acts to avoid his

financial responsibilities to the Government; this is the case of a persistent law breaker who deliberately engaged in illicit enterprise essentially dependent upon defrauding the United States. It was respondent's business to cheat the Government. To urge that such crimes are not offensive to the prevailing moral senses of our people appears unsupportable. The public conscience does not view tolerantly such organized criminal enterprise.

The decision of the Court below conflicts with at least three decisions in other Circuits. Two of them are factually indistinguishable. *United States ex rel. Berlandi* v. *Reimer*, 113 F. 2d 429 (C.A. 2); *Maita* v. *Haff*, 116 F. 2d 337 (C.A. 9). See also *Rousseau* v. *Weedin*, 284 Fed. 565 (C.A. 9). In the *Berlandi* case the Court said (113 F. 2d at 430):

> We think it cannot be said that one who conducts a business with intent to defraud the government of taxes and who probably could not conduct it at a profit if he paid the taxes stands in a different position from that of a person who defrauds a private citizen of property. * * *
>
> * * * * * * *
>
> The strongest argument for the alien is perhaps his own that he was only a "moonshiner", but this to us is not persuasive. Fraud has ordinarily been the test whether crimes not of the gravest character involved moral turpitude in the sense of the statute. Here

> fraud was established by the judgment of conviction. The man was a persistent violator of the revenue laws, with the evident intention of plying a trade that would enable him to make money by defrauding the government of taxes. We cannot say that such a business was not disreputable and did not involve moral turpitude in a sense generally accepted, however lightly "moonshining" is sometimes regarded.

The third decision opposed to the holding below is *Guarneri* v. *Kessler*, 98 F. 2d 580 (C.A. 5), certiorari denied, 305 U.S. 648. There the court held that a conviction for smuggling alcohol into the United States with intent to defraud the United States involved moral turpitude and stated (p. 581) that:

> * * * the weight of authority sustains the conclusion that where the offense involves dishonesty or fraud it also involves moral turpitude. * * * All federal offenses are statutory but that does not fix their inherent nature. Smuggling is a crime at common law. *Keck* v. *United States*, 172 U.S. 434, 19 S. Ct. 254, 43 L. Ed. 505. Fraud is an ingredient of the offense and the statutes providing for its punishment are not merely prohibitory. We have no hesitancy in holding that to clandestinely introduce goods into the United States with intent to defraud the revenue is dishonest and fraudulent and involves moral turpitude.[27]

[27] See notes in 7 George Wash. L.R. 670 (1939); 37 Mich. L.R. 1294 (1939); 13 Tul. L.R. 622 (1939).

In attempting to distinguish *Guarneri* v. *Kessler*, *supra*, the Court of Appeals observed (R. 51):

> We think the common concept of those who engage in smuggling as a business is that they are dangerous criminals, criminals who would use any force or violence necessary to meet the dangers with which the business of smuggling is fraught.

The assumption that smugglers are dangerous criminals does not distinguish them from those who make it a business to violate the alcohol tax law.[28] The record reveals that during the prohibition era respondent was engaged in bootlegging. After repeal he continued his involvement in organized lawlessness for the purpose of defrauding the Government of taxes for his personal benefit.

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[28] In recent testimony before the Senate Special Committee to Investigate Organized Crime in Interstate Commerce, Dwight E. Avis, Assistant Deputy Commissioner of Internal Revenue, stated:

> Time has wrought significant changes in the law-enforcement problem. Prohibition developed the most lucrative crimnal enterprise the world has ever known. Murderers, thieves, confidence men, and petty criminals of all types entered the traffic, later to be characterized as "gangsters, racketeers, and mobsters." Large syndicates were formed, particularly in the metropolitan cities, to control the illicit traffic. Territory was allocated by the block. Gang slayings became an almost daily occurrence as these criminals fought for control of this lucrative traffic. The present-day racketeer is largely a product of that era. [Part 2, Hearings before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, 81st Congress, 2d Sess., p. 85]

His convictions have established that he is a persistent, large-scale violator rather than a casual offender.[29] To argue that such crimes are not immoral is to disregard the tragic record of violence, bloodshed and corruption that has attended the activities of the bootlegger, the racketeer, and others who have unlawfully participated in the organized liquor business.[30] Respondent's crimes were aggravated and morally obnoxious, and appear by any test to involve moral turpitude within the meaning of the immigration laws.

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[29] In the second indictment alone, respondent was charged with possession of 4,675 gallons of alcohol and an undetermined quantity of distilled spirits (R. 33). At the rate of $2.25 a gallon then in effect, the tax on the alcohol alone would have been over $10,000.

[30] Exhibits introduced by James V. Bennett, Director of the Bureau of Prisons of the Department of Justice, before the Special Committee to Investigate Organized Crime indicate that there are presently in the federal prisons 2,035 liquor law violators and that 59.4% of them were repeaters. (Ex. 12 and 13, pp. 251-252, Part 2, Hearings before the Special Committee to Investigate Organized Crime in Interstate Commerce, United States Senate, 81st Congress, 2d Sess.)

Mr. Avis, Assistant Deputy Commissioner of Internal Revenue, testified at the same hearings (*id.* p. 86):

> Since repeal, the Unit, up to and including the month of May 1950, seized 162,292 illicit distilleries, 105,000,794 gallons of mash, 47,000 automobiles and trucks, and arrested 293,800 defendants.

CONCLUSION

The judgment below should be reversed.

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